IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Civil Revision No.3383 of 1993

Date of Decision: September 11, 2007

Mohindra Kanya Mahavidyala .....Petitioner

Versus

State of Punjab and another .....Respondents

CORAM:- HON'BLE MR.JUSTICE S. D. ANAND

Present: Mr.Arun Palli, Senior Advocate with
Mr.Tushar Sharma, Advocate for the petitioner.

Mr.Piyush Kant Jain, Additional AG Punjab.

S. D. ANAND, J.

1. The suit filed by the plaintiff-petitioner was dismissed vide judgment and decree dated 9.8.1989, under Order 17 Rule 3 of the Code of Civil Procedure. The plaintiff-petitioner preferred an appeal before the learned First Appellate Court. As the appeal was prima facie time barred, an application for condonation of delay was filed. Vide impugned order dated 14.6.1993, the learned First Appellate Court dismissed the application for condonation of delay by recording a finding that inspite of the grant of sufficient opportunity, the plaintiff-petitioner had not been able to adduce any evidence to prove that there were sufficient grounds to condone the delay.

2. Learned counsel for the petitioner argues that the initial delay in the filing of the appeal (against the judgment and decree dated 9.8.1989) occurred because the plaintiff-petitioner proceeded under a mis-conception that the dismissal of the suit had been ordered in default and it was in the light of that mis-conception that the application for restoration of the suit was filed by him, which (application) came to be dismissed vide order dated 22.10.1991.

3. The learned Additional Advocate General, Punjab resists the plea by arguing that the petitioner was duty bound to prove the sufficiency of grounds in the context of the delay in the filing of the appeal before the learned First Appellate Court. In that very context, the learned State counsel pointed out that on the date preceding 14.6.1993, the learned counsel representing plaintiff-petitioner had undertaken to produce the entire evidence on the next date of hearing and he did not honour that undertaking.

4. The suit filed by the plaintiff-petitioner was dismissed on merits in terms of the provisions of Order 17 Rule 3 of the Code of Civil Procedure, vide judgment and decree dated 9.8.1989 in the presence of a learned counsel representing the petitioner. There was, thus, obviously no scope for the petitioner to entertain any mis-conception about the nature of disposal of the suit. It is not the plea on behalf of the petitioner that any wrong information about the nature of orders passed by that Court had been given by the learned counsel. The merits or otherwise of the averments notwithstanding, it was for the petitioner to adduce whatever evidence it had to before the learned First Appellate Court in support of the application for condonation of delay. As already noticed in the impugned order by the

learned First Appellate Court, the petitioner failed in adducing evidence. There is no ground for interference.

5. Dismissed.

(S. D. ANAND)
JUDGE

September 11, 2007
SRM